

Fewer election dates? Sounds like a Sharp idea



**SAM
ATTLESSEY**
TEXAS
POLITICS

AUSTIN — Texas trivia time.

How many local elected officials are there in the state? Would you believe 26,813.

Where does Texas rank in the number of local governments? Try third in the nation with 4,791, including 254 county governments, 1,171 municipal governments, 1,100 school and community college districts and 2,266 special districts.

Those numbers come from Comptroller John Sharp's latest Texas Performance Review report which includes several suggestions on how to make elections more effective.

"The overlap of so many different political subdivisions creates a climate in which citizens feel deluged with elections," according to the review, called *Disturbing The Peace*.

In an effort to reduce costs and help spawn higher voter turnout, Mr. Sharp's report calls for reducing the number of uniform election dates from four to two.

Voter fatigue is a problem in the state, the report concludes, citing the number of elections in Dallas County in 1996.

"January saw the uniform date election, and Dallas Independent School District had a February runoff. The Democratic and Republican parties held their primary elections in March and runoffs in April. The city of Carrollton held an April election. Several jurisdictions held elections on the May uniform election date, with a few requiring runoff elections in June. Several cities used the August uniform election date for their elections and one required a special runoff. Two school districts, Garland and Mesquite, held elections on Sept. 21, and Richardson Independent School District held an election on Sept. 28," the report said, noting there was also the Nov. 5 general election.

Whew.

"When you have bond elections and things that are going to raise taxes, you ought to have it at a time when the maximum number of people are going to show up at the polls instead of gearing elections toward times that are advantageous to one side or another," Mr. Sharp said in an interview last week.

"When you know that 30 or 40 percent of the people are going to show up rather than 5 or 10 percent, school districts are going to be very cognizant of what the entire public thinks about their bond issue and how the schools are going to be run," he said in suggesting all bond elections be held in November.

The performance review noted that having only two election dates — one in the spring and the other in November — would "heighten the importance" of the elections and "create additional incentives for local governments to coordinate elections with one another."

The comptroller's report also recommended an innovative experiment: amend the state election code to allow counties to hold the next constitutional amendment election by mail.

"This election could be used as a pilot study to identify additional opportunities for mail voting in Texas," the performance review noted. "Local units of government could gain the experience needed to apply vote by mail to local elections."

At least 16 states have used voting by mail for some elections, and those elections have resulted in savings to taxpayers, more participation and reduced fraud, the review concluded.

"You can check a fraudulent mail ballot as easy as you can a fraudulent ballot from someone who came from a graveyard," said Mr. Sharp, predicting mail voting would increase voter turnout.

"It's a little frightening that in some elections, huge multimillion-dollar projects are decided by a handful of people," he said.

SHORT SHOTS AND LONGSHOTS

State senators huddled in a private caucus last week, trying to determine if they would do this session about redrawing the boundaries of their own district and the 30 congressional districts in state.

The senators, who fear tinkering with political boundaries would greatly enhance the possibility of political turn in this legislative session, were divided the redistricting issue, and no decision made.

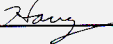
Sam Attlessey is deputy chief of the tin bureau of The Dallas Morning News

Agenda Item Cover Sheet

- ☒ Regular Item
☐ Consent Item
☐ Statutory Item

Item Submitted By: Harvey Cargill, Jr., City Attorney

For Council Meeting Of: Thursday, January 22, 1998

Director Approval: 

City Manager Approval: _____

Item: Discussion and possible action on an Ordinance proposing amendments to the Charter of the City of College Station and calling for an Election.

Item Summary: The present charter has no term limits and provides for two (2) year staggered terms.

Item Background: The Council requested consideration of these items for possible charter amendment. College Station's Charter, Sections 28, 29 and 30, provides the terms of the City Secretary, City Judge and City Attorney coincide with the Mayor's two (2) year term. If the Council's terms are increased, the Council should decide whether to adjust these terms also.

Plurality to Majority Vote: The Texas Constitution requires majority vote and run-off provisions for terms longer than two (2) years. This adds amended language for Sub-section (e) in Part 1 of the ordinance.

Additionally, the Council sets in motion a charter amendment election by passing an ordinance with the exact language it wishes adopted. The ordinance must be passed no sooner than 30 days nor later than 90 days from the date on which it wishes to set for an election date. If the next uniform election date is closer than 30 days, the election is held on the next uniform election date. The timing of ordinance approval is critical, because this ordinance sets in motion the date for the charter amendment election.

City Attorney Recommendations: Prepared this agenda item cover sheet.

Council Action Options: Discuss and give direction as to what ordinances, if any, it wishes to consider on future agendas.

Supporting Materials:

1. Texas Home Rule Charters, Pages 51, 52, 53, 54, 55 and 56.
2. Memo discussing charter amendments, dated April 4, 1996
3. Proposed Ordinance
4. Texas Home Rule Charters, Pages 71 and 72

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Council Action Options: Discuss and give direction as to what ordinances, if any, it wishes to consider on future agendas.

Supporting Materials: (See Workshop Item)



Texas HOME RULE CHARTERS

By Terrell Blodgett



Texas Municipal League
July 1994

Terms of office

Although Texas charters overwhelmingly call for staggered two-year terms for mayors and councilmembers, it would nevertheless be pertinent to discuss, at least briefly, the generally cited advantages of two, three, and four-year terms and of staggered versus concurrent terms.

Two-year term

The principal advantage of the two-year term is that it requires councilmembers to submit themselves frequently to the voters. It also permits citizens to serve as councilmembers for short periods of time.

The disadvantage of two-year terms is that they require an almost constant campaign readiness for those members who wish to extend their council service, or for potential opponents. For new members, two years is a short time to become acquainted with the intricacies of city government and to learn about the problems of city agencies and programs or those parts of the city with which they may have had no prior experience.

Three-year term

A three-year term's principal advantage is that it lengthens the period of service before facing the voters, giving a member time to compile a record and giving a new member time to become proficient in the job. The three-year term also clearly differentiates council service from other public offices. It is a long enough time to accomplish something, but too short to feel like there is a lease on the position.

The principal disadvantage of the three-year term is that one of every two municipal elections will fall in a state or national election year. It could necessitate a separate election, producing some voter confusion. There is also some prospect that the partisanship of state and national elections would be carried over into city elections.

Four-year term

Most observers of governments tend to feel that 4-year terms encourage those elected to them to invest more time in working on substantive and larger problems of government rather than thinking about campaign strategy, and to become more proficient in policy issues.

Longer terms can, however, work to increase the insulation of elected officials from the electorate, although the many arenas for direct contact with constituents in city government appear to make this a far less severe problem than it is for members of Congress or state legislatures.²⁴

Staggered Terms - More than 90 percent of Texas charters call for staggered terms. Charter drafters in Texas have obviously felt that it is desirable to have some continuing experience on the city

council and avoid a wholesale turnover of city councilmembers. Staggered terms do tend to provide some stability on the council. On the other hand, they also thwart the will of the people to make a major change of direction. For example, with a five member council and two-year staggered terms, three members would come up for election one year and two the next. If the council had taken or failed to take a stand on a major issue before the election year when two members were running, the vote for the two incumbents or for two newcomers would not necessarily change the stance taken by the council prior to election.

Our survey tabulated the number of cities using 2, 3, and 4 year terms as well as whether those terms were staggered or not. The results are shown below:

Figure 9-4: Terms of office

Terms	Staggered	Not Staggered	Total Cities
2 years	207	17	224
3 years	52	---	52
4 years	14	---	14
		Total Cities	290

Term limits

Perhaps no legislative issue in many years has evolved with such gathering momentum as term limits. Originally proposed for members of the U.S. Congress and, in some states, for state elected officials, term limits have now come to the local level. Actually, they may have started at the local level in Texas. The citizens of the North Texas city of Paris placed a two-term (four-year) limit on their city council when they adopted their first home rule charter in 1948. A few other cities adopted such provisions in the 1970s, but the real movement did not start until the late 1980s. Today, 66 Texas cities have limits on the number of consecutive years their mayors and city councilmembers may serve; 48 of those cities have adopted such limits within the past five years (1990 to 1994). The form of government or size of city appears to have very little influence on voter adoption of term limits.

Arguments rage back and forth over the merits of the "term limits" movement. Opponents generally include political scientists and so-called "urban experts" who insist that voters have the ability to terminate any elected official's career by merely turning him/her out at the polls. Proponents of term limits maintain that advantages of incumbency, both in campaign finance and in name recognition, deter or block the termination vote. They argue that term limits are necessary to bring "government back to the people." Along with a widespread distrust, or at least suspicion of government, this "back to the people" plea accounts for term limit elections passing across the country with generally wide margins. Whatever the merits, term limits appear to be here to stay; thus, this monograph will examine the charter provisions in Texas cities and analyze the trend to 1994.

One of the obstacles to analyzing this movement is the wide variation in charter terminology. It is impossible to ascertain in a few cities whether the limits apply to combined service of one person as a mayor and councilmember or whether the two offices are meant to be considered separately. An equally formidable obstacle is the absence of any case law history and the resulting proliferation of different interpretations.

Term limits in charters are expressed in one of two ways. One way is to have separate limits for the mayor and members of the council. A typical charter with this type limit is Friendswood.

That charter states: "The mayor and councilmembers shall be elected to serve for three-year terms as provided below, but no person shall be elected to serve in the capacity of councilmember for more than three consecutive three-year terms, nor shall any person be elected to serve in the capacity of mayor for more than three consecutive three-year terms."

The other way to express limits is to count service as mayor and service as a councilmember together. The charter of the City of Rockport is very straightforward. It states: "No person shall serve more than ten consecutive years on the City Council." The statement to look for here to assure that the mayor is included in the definition of "City Council" is this additional statement found in the Rockport charter: "The legislative and governing body of the City shall consist of a Mayor and four Councilmen and shall be known as the City Council of Rockport."

Separate limits on years of service

A total of 36 cities have separate limits for mayors and councilmembers. The most popular limit for these cities is six years for each of the offices. This includes cities that have a three-term limit on two-year terms, as well as cities that have a two-term limit on three-year terms. The full breakdown by limit in years is as follows:

Figure 9-5: Term limits in years when limits are separately applied

Cities in which the mayor has <u>separate limit</u>	<u>Limit in years</u>	Cities in which councilmember have <u>separate limits</u>
9 ^a	4	7
18	6	18
9	8	10 ^b
<u>2</u>	9	<u>2</u>
38		37

^aJacksonville and Waco have limits on mayors, but not on the council.

^bPeartland has limits on councilmembers, but not on the mayor.

The chart above considers limits in one of the two positions—mayor or councilmember. In this type of language, a councilmember could serve his/her limit of say, six years, and then run and be elected as mayor and serve another six years. Assuming both posts carry six-year limits, one individual could legally serve 12 years.

It should be noted that these limits have been constrained in six cities by imposing "combination" limits. For example, in Graham, although the mayor and councilmembers have six-year limits individually, the charter limits any combined service in those two positions to ten years, not twelve years.

The following chart portrays the maximum number of consecutive/successive years a person could serve as councilmember or mayor under the separate limits category:

Figure 9-6: Maximum years service when limits separately applied

<u>Limit on Years of service</u>	<u>Number of cities</u>
6	1
8	9
10	1
12	15
16	8
18	<u>2</u>
	36

Counting service years together

Thirty cities combine mayoral and councilmember service into a single term limit. The Rockport charter is an example: only "ten consecutive years" on the council. When examining these charter provisions, we find the following term limits:

Figure 9-7: Term limits in years when service applied together

<u>Limit on years of service as member of city council including mayor</u>	<u>Number of Cities</u>
4	2
6	19
8	3
9	1
10	3 (five two-year terms)
12	<u>2</u>
	30

A six-year maximum period of service on the council is the choice in more than one-half of the cities above.

Charter language on term limits

Since "model" language has not evolved on this subject, current charter language varies widely. Many charters simply place a limit on "consecutive" or "successive" terms, leaving unanswered the question whether a person appointed or elected to a partial term loses some of the time that might otherwise be allowed. Occasionally, a charter will clearly state that "a portion of a term" does not count as a term of office for purposes of a limit. Some charters use the word "full term" or

"regular term". These are generally interpreted to mean that if a person comes into a partial term, the partial time will not count toward the limit.

Only 14 cities require a person to "sit out" one year or one term before running for office again (one city requires that an individual must sit out 30 months). Whether this means that in the other cities, a person reaching his/her maximum can never come back is unknown. Two cities do state that the term limit is for the "lifetime" of the individual.

Finally, a charter should make it clear whether the limits apply to current councilmembers. Several charters spell this out. Most do not at the present time.

In summary, the term limit movement is still relatively young. If a city does not have this kind of provision in its charter and desires to have a charter amendment election, officials are urged to carefully review with the city attorney the language to be used in order to avoid some of the ambiguities identified. In May 1994, Austin adopted a charter amendment limiting terms of office, but did provide that if an incumbent councilmember, when his/her limit of terms has been reached, can get a petition signed by five percent of the qualified voters in the city, his/her name shall go back on the ballot. Houston adopted such an amendment in 1991, had several councilmembers qualify under the petition route in the 1993 election, and decided at a January 15, 1994 election to rescind the petition bypass. Thus, Houston's term limits have no exception to them.

AGAINST THE GRAIN

Although the trend is strong for adopting term limits, Port Neches in 1983 and Sachse in 1990 adopted charter amendments rescinding the term limits then in existence in their charters. And Schertz, in 1994, defeated two different charter amendments that would have set limits on councilmembers.

Qualifications for office

Early Texas city charters included a detailed and lengthy list of qualifications for the prospective mayor or city councilmember. The first officeholders and voters had to be white, male, and citizens of the Republic. Several cities also had property and residence requirements. The original Galveston charter in 1840 required the mayor to own \$1,000 worth of property. One Texas city in which the current charter was adopted prior to the home rule amendment of 1912 still has a provision requiring any member of the governing body to "pay tax on \$1,000 worth of property". A number of charters still require ownership of property within the city and no indebtedness to the city, plus three years residence in the city before filing as a candidate. These provisions in current charters are historical reminders of practices before state law and court cases established the controlling criteria for qualifications of all public officials.

For almost 20 years, state law has set forth requirements to run for public office in Texas and these requirements apply to candidates for the governing bodies of Texas home rule cities. In addition, federal court cases have held that a city may not require an officeholder to be an owner of property and may not refuse to seat a councilmember for being delinquent in taxes to the city.

The Election Code criteria are set out in Section 141.001. Under that section, a candidate must:

- (1) be a United States citizen,
- (2) be 18 years of age or older upon the commencement of the term to be filled at the election,

- (3) have been a resident of Texas for at least 12 months as of the deadline for filing for the office.
- (4) have resided in the city for at least 6 months as of the deadline for filing for the office.
- (5) not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities, and
- (6) not have been found mentally incompetent by a final judgment of the court.

Exceptions for home rule cities

The Election Code authorizes home rule cities to make two exceptions: (1) the charter can require council candidates to be up to 21 years of age, rather than 18, upon the commencement of the term to be filled at the election; and (2) the charter can require candidates to be residents of the city for up to 12 months, rather than 6 months, as of the deadline for filing for office.

Virtually every charter in the state says a candidate must be a qualified voter. This is not required by state law, but a home rule city may include this requirement in its charter.

Despite the provisions in the Election Code, some cities still amend their charters to add requirements that are not enforceable. In earlier days, charter writers might have been accused of placing unenforceable qualifications in the charter in an attempt to discourage citizens who might otherwise consider filing for office. It is believed that today's charter writers are simply not aware of the state law limitations that supersede any charter language.

One disqualification for office that some charters have addressed is dual office-holding. There are three distinct legal barriers to holding more than one public office at the same time: (1) the Texas constitutional prohibition against dual office-holding; (2) the common law doctrine of incompatibility; and (3) the separation of powers provisions of the Texas constitution.

All three of these barriers are too complex to discuss in detail in this publication. Any mayor or councilmember contemplating elective or appointive office in another governmental entity would be well advised to consult with the city attorney before making any definitive moves.

Some charters provide that city employees must resign before they can run for the city council in their own city. Provisions of this type have been struck down by the courts for city employees covered under the state fire and police civil service law.²⁹

WANTED: ONE BRAVE CITY MANAGER

"Any person having the qualifications set for councilmember under Section 4.02 in this charter shall have the right to file an application to have his name placed on the official ballot as a candidate for any one elective office. Such application shall be made in writing and shall include name, address, date of birth; and personal signature of such candidate. Such application shall be accompanied by his loyalty affidavit, as prescribed by Section 141.031(k) Texas Election Code, his signed affidavit indicating willingness to submit himself for substance abuse testing, within thirty (30) days, after elected and when randomly selected by the city manager, throughout the duration of his term of office."

Financial disclosure

The Colleyville, Friendswood, and San Marcos charters each have provisions that candidates must file financial disclosure statements with the city secretary before any election in which they are a candidate.

Harvey Cargill, Jr.
City Attorney

Susan M. Martin
Sharon E. Sneed
Edwin V. Allen
Victor G. Carrillo
Attorneys



CITY OF
ABILENE

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MEMORANDUM

April 4, 1996

TO: The Honorable Gary D. McCaleb, Mayor
and Members of the City Council

FROM: Harvey Cargill, Jr., City Attorney

SUBJECT: Charter Amendments

Brief History:

The present City Charter was adopted in 1962. The Charter was amended in 1976 and 1981. In 1976, the voters approved a 12 month residence requirement and a 21 year old age requirement for the Mayor and Council, and changed the date of elections to the first Saturday in April. The voters that year also disapproved a provision allowing executive sessions.

In 1981, the voters approved a Charter amendment allowing executive sessions. In 1978, 1981 and 1991, the voters disapproved a Charter amendment to change from at-large elections to single member district elections for the City Council. The City of Abilene has had four Charter amendment elections in 1976, 1978, 1981 and 1991.

General Information:

1. What is a City Charter?

A City Charter is a specific grant of authority by the citizens of a community to form a municipal body politic and corporate.

2. How is a City Charter amended?

A City Charter is amended by a majority of the voters approving a change in the City Charter.

3. How often can the Charter be amended?

If any amendments are approved by the voters, the Charter cannot be amended again for two years.

4. When can a City Charter election be held?

Tex. Local Gov't Code § 9.004(b) provides that charter elections shall be on the first authorized uniform election date prescribed by the Election Code § 41.001. Section 41.001 provides for elections to be held on the following dates:

- (1) third Saturday in January;
- (2) first Saturday in May;
- (3) second Saturday in August; or
- (4) first Tuesday after the first Monday in November (this election date is not available in even-numbered years - Election Code § 41.003)

5. What steps must be followed to hold a Charter election?

1. State law requires the City Council to pass an ordinance setting out in exact language the changes to be considered by the voters. The City of Abilene's Charter requires ordinances to have two readings by the City Council. After the second reading of the ordinance, there must be at least 30 days before the election is held. The date of the election is the next available uniform date. Additionally, notice must be given as required by § 9.004(c).
2. In addition to these requirements, the City must submit a voting rights preclearance request to the United States Department of Justice, Voting Rights Division. This filing must be at least 60 days before the date of the election; otherwise, the election can be halted for failing to obtain preclearance. The filing must show the changes will have no negative impact on minority voters.

6. Who can institute changes to the City Charter?
 - (1) The City Council on its own motion may submit one or more amendments to the voters; or
 - (2) The City Council must submit a proposed Charter amendment to the voters if a petition is presented supporting the change equal to at least 5% of the number of qualified voters of the municipality or 20,000 voters whichever number is smaller.

7. At this point, when would be a logical time to have a Charter election in the next year?

January or May would be logical times to hold Charter elections. If the election is held in January, the City would have the expense of the special Charter election.

8. What would be the cost of a special Charter election?

The cost to hold a special election would be about \$20,000.

9. Can a Charter election be held in conjunction with a regular City election?

Yes, a Charter election can be held at the same time a City Council election is held. If the Charter election is held in May, there would be little extra expense.

10. Can the City Council or City Council members take a position on Charter amendment issues?

Yes, the Council and members can take a position in favor of or in opposition to City Charter amendments. In 1978, the City Council took no position regarding the change to single member districts. The issue failed 3 to 1. In 1981, the City Council opposed the adoptions of single member districts, but favored the allowance of executive sessions. The Charter was amended by the voters to allow executive sessions but the voters disapproved single member districts 2 to 1. In 1991, the Council really took no position and the voters disapproved single member districts about 57% to 43% against.

11. Do you have any suggestions as to how Charter amendments might be reviewed?

I would suggest that you give Lanny Lambert, Jo Moore and me 30 days to review the

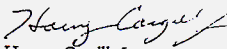
Memo to the Honorable Gary D. McCaleb, Mayor
and Members of the City Council
Subject: Charter Amendments
April 4, 1996
PAGE 4

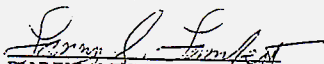
Charter and see what areas need to be examined. Some changes simply will be to update and correct references to statutes.

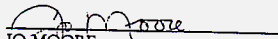
After our review is completed, we can update the Mayor and Council. If this review shows areas of policy consideration on which the Council wants additional input or research done, the Council could give a specific charge to a citizen committee to review and report back their findings. Depending upon the Mayor and Council's direction, we also recommend that we have the department directors review the Charter sections pertaining to their responsibilities. After the directors' review, the appropriate boards can be contacted by the staff for their input.

We feel this kind of process will preserve the Mayor's and Council's opportunity to present amendments you feel are appropriate to the voters.

Sincerely,


Harvey Cargill, Jr.
City Attorney


LANNY LAMBERT


JO MOORE

HCjr/sg
Attachment: 1991 Charter Amendment Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, PROPOSING AMENDMENTS TO ARTICLE III, THE CITY COUNCIL, NUMBER, SELECTION, TERM, SECTION 18; CITY SECRETARY, SECTION 28; CITY JUDGE, SECTION 29; CITY ATTORNEY, SECTION 30; CALLING AN ELECTION ON SAID ISSUES, PROVIDING FOR PUBLIC NOTICE AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of College Station hereby calls an election for the first Saturday in May, 1998. Said election will allow the voters to determine whether the Charter should be changed as hereinafter set out; and

WHEREAS, Section 41.001 of the Election Code provides that the next earliest time for the Charter election is the first Saturday in May (May 2, 1998); now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

That the following proposed Charter changes be submitted for vote on May 2, 1998:

PART 1: That Sub-section (c), Sub-section (d) and Sub-section (e) of Section 18, Number, Selection, Term of Article III, The City Council, of the Charter of the City of College Station, Texas, be submitted for amendment, and if approved by a majority vote, be changed to read as follows:

- “(c) In even-numbered years, three (3) Councilmen, Places 2, 4 and 6, and the Mayor, and in odd-numbered years, three (3) Councilmen, Places 1, 3 and 5, respectively, shall be elected. The Mayor and Councilmen elected in 1998 shall serve two-year terms until their successors are elected and qualified. In 1999, Councilmen Places 1, 3 and 5, and in 2000, Councilmen Places 2, 4 and 6 and the Mayor, respectively, shall be elected for three-year terms.
- (d) The Mayor and each Councilman shall hold office for a period of three (3) years until his successor is elected and qualified. All elections shall be held in the manner provided in Article IX of the Charter.
- (e) No person shall be deemed elected to an office unless that person receives a majority of all the votes cast for such office. The Council shall, upon declaring the official result of the election, order a run-off election for each office to which no one was elected. Such run-off election shall be held pursuant to the election code and in such run-off election the two (2) candidates who received, in the preceding election, the highest number of votes for each office to which no one was elected, shall be voted on again by the qualified voters, and the candidate who receives the majority of the votes cast for each such office in the run-off election shall be elected to such office.”

PART 2(a): That Section 28, City Secretary, of Article III, The City Council, of the Charter of the City of College Station, Texas, be submitted for amendment, and if approved by a majority vote, be changed to read as follows:

"City Secretary

Section 28. Upon recommendation by the Mayor and approval by the City Council, there shall be appointed a City Secretary and such Assistant City Secretaries as may be deemed advisable. The City Secretary, or an Assistant City Secretary, shall give notice of council meetings, shall keep a journal of its proceedings, shall authenticate by his signature and record in full in a book or books kept and indexed for the purpose of recording all ordinances and resolutions, and shall perform such other duties as the City Council shall assign to him, and those elsewhere provided for in the Charter. His term of office shall be for two (2) years coinciding with the term of the Mayor. Beginning in 2000, his term of office shall be for three (3) years coinciding with the term of the Mayor."

PART 2(b): That Section 29, City Judge, of Article III, The City Council, of the Charter of the City of College Station, Texas, be submitted for amendment, and if approved by a majority vote, be changed to read as follows:

"City Judge

Section 29. There shall be a magistrate of the Corporation Court known as the City Judge who shall be appointed by the City Council for a term of two (2) years coinciding with the term of the Mayor. Beginning in 2000, his term of office shall be for three (3) years coinciding with the term of the Mayor. He may be removed by the City Council at any time for incompetency, misconduct, malfeasance, or disability. He shall receive such salary or fees as the Council may fix from time to time. The Council shall appoint an alternate judge who shall serve in the absence of the City Judge. All costs and fines imposed by the Corporation Court, or by any court in cases appealed from judgments of the Corporation Court, shall be paid into the City Treasury for the use and benefit of the City."

Part 2(c): That Section 30, City Attorney, of Article III, The City Council, of the Charter of the City of College Station, Texas, be submitted for amendment, and if approved by a majority vote, be changed to read as follows:

"City Attorney

Section 30. The City Council shall appoint a competent and duly licensed attorney, preferably one residing in the City of College Station, who shall be its City Attorney. He shall receive for services such compensation as may be fixed by the City Council and shall hold office for a term of two (2) years coinciding with the term of the Mayor. Beginning in 2000, his term of office shall be three (3) years coinciding with the term of the Mayor.

The City Attorney shall represent the City in all litigation. He shall be the legal advisor of and attorney and counsel for the City and all officers and departments thereof.

The City Attorney shall have power to appoint an assistant or assistants if deemed necessary by him, subject to the approval of and at such compensation as may be fixed by the City Council, and such assistant or assistants may hold office at the will of the City Attorney, so long as he continues in that office."

Part 3: That said amendment be presented for "yes" or "no" vote in the following form:

"Shall Section 18 of the City Charter be amended to provide for three (3) year terms for Council members and conforming provisions for Sections 28, 29 and 30?"

Part 4: That Section 18, Number, Selection, Term, of Article II, The City Council, of the Charter of the City of College Station, Texas, be submitted for amendment, and if approved by a majority vote, be changed by adding Sub-section "f" to read as follows:

"(f) Beginning in 1999, there shall be no limit to the total number of three-year regular terms served by the Mayor and Councilmen; however, the Mayor and Councilmen shall not be eligible to run for three (3) consecutive three-year regular terms."

Part 5: That said amendment be presented for "yes" or "no" vote in the following form:

"Shall Section 18 of the City Charter be amended to limit the Mayor and Councilmen to two (2) three-year consecutive terms?"

Part 6: That an election is hereby called on May 2, 1998, on said aforementioned Charter Amendments. If said City Charter Amendments shall receive a majority of "yes" votes, it shall be declared passed. Said Amendments passing by a majority vote shall be entered upon the records of the City of College Station and be declared by the Council of College Station to be adopted and shall be effective hereafter.

Part 7: That a copy of this ordinance shall be published in its entirety in the *Bryan/College Station Eagle*.

Part 8: That this Ordinance shall take effect immediately from and after its date of final passage.

PASSED, ADOPTED and APPROVED this _____ day of _____, 1998.

APPROVED:

ATTEST:

LYNN McILHANEY, Mayor

CONNIE HOOKS, City Secretary



T EXAS HOME RULE CHARTERS

By Terrell Blodgett



Texas Municipal League
July 1994

The city election process traditionally has been the sounding board for public opinion. With their votes, citizens choose their leaders and endorse or reject such major decisions as issuance or assumption of bonds and sale of alcohol. Because of their importance, city council elections and other elections conducted by the city are discussed in a separate article in the NCL model city charter and most Texas charters.

That article in today's city charters is primarily a recitation of the specific requirements for municipal elections in the very detailed Texas Election Code. This code addresses voter qualifications and registration, election officers and observers, time and place of elections, supplies, the conduct of elections, absentee voting, laws pertaining to candidacy, regulation of political parties, elections to fill vacancies, recounts, election contests, and regulation of political funds and campaigns.

Although the qualifications for mayor and/or councilmember and the requirements for filing were discussed at length in Chapter 9, there are several additional areas of importance to city officials and charter commissioners that warrant special treatment here. They include:

- plurality/majority vote
- cumulative voting
- election dates (uniform and others)
- nonpartisan elections
- the elections article

Plurality/majority/cumulative voting

Section 2.001 of the Election Code is captioned Plurality Vote Required and states: "Except as otherwise provided by law, to be elected to a public office, a candidate must receive more votes than any other candidate for the office." This is very clear--in an election for one place with three candidates, the winner need only poll more than either of the other two candidates, not more than the two of them combined (that would be majority, of course.) The key phrase above, however, is "unless otherwise provided by law." There are two, and possibly three, situations that qualify under this phrase. First, any public official elected for a term of more than two years is required to be elected by majority vote. This is found in the Texas Constitution, Article 11, Section 11. Second, Section 275 of the Election Code provides that in cities of over 200,000, election of city officials shall be by majority vote. Third, home rule charters have been recognized as "law" as the term is used in Section 2.001. Until 1994, no other kind of election was being conducted except by majority or plurality. As noted earlier, however, the City of Andrews adopted a charter amendment in May 1994 calling for election of its council by cumulative voting. Such vote might mean that other cities in the state should be able to adopt cumulative voting by charter amendment. It will be interesting to observe the future development.

Regardless of what happens on cumulative voting, charter drafters are cautioned to be very careful in their use of the two terms--majority and plurality. Several Texas charters somehow wound up calling for election of their city officials by both majority and plurality. In one city the title of the section is "Election by Majority", but the text says "The person receiving the highest vote..." In a recent court case, the district judge ruled that the majority vote language prevailed. In another city, one portion of the charter calls for "election by majority". A few pages later, it states that "election shall be by plurality." That city is utilizing majority vote until the charter can be corrected.

Arguments for and against majority/plurality voting

Cities under 200,000 population that have two-year terms have a choice of electing city councils by majority vote or by plurality. To assist in this decision, the following is a brief list of some of the arguments made for each method of election.

Arguments in favor of plurality and against majority elections:

- (1) The election is clear and simple. Voters have to go to the polls only once, and all voters in the city vote in the same election.
- (2) When a majority is required to elect, there are usually only a few races in which no candidate receives a majority of votes at the first election. This means that when the second runoff election is held, it is for only a few positions. When candidates run from single-member districts, the runoff election will be held in only a few districts. Little public attention gets focused on the runoff elections.
- (3) The Texas majority run-off system has been accused of discrimination against women and minorities. They run and win in the first election against a wide array of other candidates, but then can be overwhelmed by a unified opposition in the low-turnout run-off election. The Justice Department, with increasing frequency, looks for alternative voting methods that tend to increase the electoral clout of minorities. Cumulative voting, bullet voting, and single-shot voting each require a plurality system as a base.

Arguments in favor of majority and against plurality elections:

- (1) Members of the city council should represent a clear majority of the voters in their constituencies. Only a majority vote gives them a clear mandate to pursue a program and speak for the interests of their district or other constituency.
- (2) When there are multiple candidates, the issues can be diffused and voters can be uncertain of the merits of the respective candidates. In such elections, the narrowing of the race to the two strongest candidates sharpens the choice and removes the ambiguity from the electoral results.
- (3) The cost of a runoff election is small in comparison with the added stature clear majorities give to those who are ultimately elected by clear majorities. Runoff elections are also important in diverse constituencies because they force the two contenders to appeal to those who supported other candidates in the first election. This contributes to building coalitions that include people whose interests might be safely ignored if a candidate could win with a plurality of votes, because each candidate must make a concerted appeal to the largest voting bloc in the constituency.

Election dates

The Texas Election Code prescribes certain days for holding municipal elections. City elections may be held on the third Saturday in January, the first Saturday in May, or the second Saturday in August. In odd-numbered years only, city elections also may be held on the first Tuesday after the first Monday in November. Any municipal election, held on a day other than one of those prescribed is void unless it is specifically authorized by the statute.

City council and charter amendment elections are not authorized on any day except the ones listed above. In planning for charter amendment elections, it must be remembered that cities cannot hold any type of election in November in even-numbered years (there are rare exceptions to this statement). The statute, however, allows a number of city elections on other dates—run-off elections, local option elections held under the Alcoholic Beverage Code, those held for issuance or assumption